

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:14-CV-295-F

UNITED STATES OF AMERICA, :
 :
Plaintiff, :
 :
vs. : **FIRST AMENDED COMPLAINT FOR**
 : **FORFEITURE IN REM**
\$107,702.66 IN UNITED STATES :
CURRENCY SEIZED FROM LUMBEE :
GUARANTY BANK ACCOUNT NUMBER :
82002495, :
 :
Defendant. :

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and pursuant to Fed. R. Civ. P. 15(a)(1)(B), states as follows:

1. This is a civil action in rem brought to enforce the provisions of 31 U.S.C. § 5317, providing for the forfeiture of any property involved in violations of 31 U.S.C. § 5324, and any property traceable to such violation or conspiracy.

2. This Court has jurisdiction over this matter by virtue of 28 U.S.C. §§ 1345 and 1355. Venue in this district is proper by virtue of 28 U.S.C. §1395.

3. The defendant is \$107,702.66 in United States currency seized from Lumbee Guaranty Bank Account Number 82002495.

4. The defendant is located within the jurisdiction of this Court, it being in the Eastern District of North Carolina. It is presently in the custody of the Internal Revenue Service in Raleigh, North Carolina.

5. The potential claimants in this action are: Lyndon Bruce McLellan, L&M Convenience Mart, Inc., Darlene Hunt, and Mary Bruce Floyd.

6. The facts and circumstances supporting the seizure and forfeiture of the defendant are contained in the previously filed application in support of seizure warrant made by Task Force Officer Andrew Pappas, Internal Revenue Service-Criminal Investigation (IRS-CI), which resulted in the issuance of a seizure warrant by Magistrate Judge Robert B. Jones, Jr. as to the subject bank account, and which is attached hereto as Exhibit A. Such facts constitute probable cause for the seizure and forfeiture of the defendant property.

7. In addition to the facts contained in the application, on November 7, 2008 Claimant Lyndon Bruce McClellan, was advised in writing of the anti-structuring requirements of federal law, and he acknowledged such understanding by signing an official Notification of Law, as attached hereto as Exhibit B.

8. In addition, on or about the time of the seizure of the defendant currency, McClelland stated that he understood that

federal law required that a form be filled out by a bank if deposits or withdrawals of over \$10,000 were made. He admitted that he was officially advised of this on November 7, 2008. Nevertheless, he admitted that he continued to make withdrawals of under \$10,000 after November 7, 2008.

9. In a further interview, employee Mary Floyd admitted that she frequently made cash deposits for the claimant, and that when a deposit would be more than \$10,000, she took some cash out to keep the deposit under \$10,000 so that no bank filing would be required. She said that McClellan was aware of this.

10. On July 30, 2014 McClellan signed a Consent to Forfeiture, attached hereto as Exhibit C, wherein, after being advised of his right to review with counsel, he agreed that the seized defendant funds were subject to forfeiture.

11. For the foregoing reasons, the defendant is forfeitable to the United States pursuant to the provisions of 31 U.S.C. § 5317.

WHEREFORE, the United States of America prays that a warrant of arrest in rem issue for the arrest of the defendant; that due notice be given to all parties to appear and show cause why the forfeiture should not be decreed; that judgment be entered declaring the defendant forfeited to the United States of America for disposition according to law; and that the United

States of America be granted such other relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Respectfully submitted this 30th day of April, 2015.

THOMAS G. WALKER
United States Attorney

BY: /s/ Stephen A. West
STEPHEN A. WEST
Assistant United States Attorney
Attorney for Plaintiff
Civil Division
310 New Bern Avenue, Suite 800
Federal Building
Raleigh, NC 27601-1461
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
E-mail: steve.west@usdoj.gov
NC State Bar No. 12586

VERIFICATION

I, Stephen A. West, Assistant United States Attorney for the Eastern District of North Carolina, declare under penalty of perjury, as provided by 28 U.S.C. Section 1746, the following:

That the foregoing First Amended Complaint for Forfeiture is based on reports and information furnished to me by Task Force Officer Andrew Pappas of the Internal Revenue Service-Criminal Investigation (IRS-CI), and to the best of my information and belief, is true and correct.

This the 30th day of April, 2015.

/s/ Stephen A. West
STEPHEN A. WEST
Assistant United States Attorney
Civil Division

CERTIFICATE OF SERVICE

I do hereby certify that I have this 30th day of April, 2015, served a copy of the foregoing upon the below-listed counsel electronically via ECF:

James R. Lawrence, III
Attorney at Law
1400 Crescent Green, Suite 300
Cary, NC 27518

Robert E. Johnson
Scott Bullock
Attorneys at Law
901 North Glebe Road, Suite 900
Arlington, VA 22203

Wesley Hottot
Attorney at Law
10500 NE 8th Street, Suite 1760
Bellevue, WA 98004-4309

THOMAS G. WALKER
United States Attorney

BY: /s/ Stephen A. West
STEPHEN A. WEST
Assistant United States Attorney
Attorney for Respondents
Civil Division
310 New Bern Avenue
Federal Building, Suite 800
Raleigh, NC 27601-1461
Telephone: (919) 856-4049
Facsimile: (919) 856-4821
E-mail: steve.west@usdoj.gov
NC State Bar No. 12586